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SMITH *v.* WOODWARD et al.STORY *v.* SAME.

Jan. 24, 1918.

[94 S. E. 916.]

**1. Mortgages (§ 360\*)—Trust Deeds—Consent to Sale—Acquiescence—Evidence.**—A grantor in a trust deed held, under the evidence, not to have consented to nor approved the sale of more land than was necessary to satisfy the indebtedness secured.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 97, 110.]

**2. Mortgages (§ 360\*)—Trust Deeds—Sale—Estoppel.**—A grantor in a trust deed was not estopped to object to the sale of more land than was necessary to satisfy the indebtedness, where he requested a sale "under the trust deed" and was in the vicinity of the sale and might have been consulted as to the trustee's further authority as his agent.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 97, 110.]

**3. Mortgages (§ 360\*)—Trust Deeds—Sales—Rights of Subsequent Creditors.**—Creditors under trust deeds before default have no control over, or right to interfere with, a sale being made under a prior deed.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 96.]

**4. Mortgages (§ 360\*)—Trust Deeds—Authority of Trustee.**—A trustee in three trust deeds, only one of which is due and under which sale is being had, has no authority to sell more pieces of property than is necessary to satisfy the debt secured by that particular deed.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 97.]

**5. Mortgages (§ 372 (1)\*)—Trust Deeds—Sale—Purchasers—Caveat Emptor.**—The rule of caveat emptor applies to a sale under a trust deed.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 103.]

**6. Mortgages (§ 372 (1)\*)—Trust Deeds—Purchaser—Notice—Setting Aside.**—A purchaser at a sale under a trust deed has constructive notice of the contents of the trust deed and the amount of the debt, and, although he gets the legal title, where he has purchased enough land to satisfy the debt, he buys any additional parcels of land at the risk of its being set aside.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 130, 107.]

**7. Mortgages (§ 372 (2)\*)—Trust Deeds—Sales—"Remote Purchaser."**—One present at a sale under a trust deed, who bids at the sale but is outbid and then buys the highest bidder's bid and the deed is made direct to him, is not a remote purchaser as far as irregularities in the sale are concerned.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 103.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**8. Mortgages (§ 372 (1)\*)—Sale under Trust Deed—Right of Purchaser.**—Under Code 1904, § 2760, allowing recovery for improvements to one holding land under a title believed by him to be good, does not apply to one purchasing at a sale under a deed of trust, who has constructive notice that the sale was irregular.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 103.]

**9. Notice (§ 5\*)—Means of Knowledge—Duty to Use—Equity.**—Means of knowledge, coupled with duty of using them, are in equity equivalent to knowledge itself.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 623.]

**10. Mortgages (§ 369 (5)\*)—Trust Deeds—Sales—Action to Set Aside—Laches—Improvements.**—One bringing suit to set aside a sale under a trust deed within 40 days of the sale is not negligent by reason of the purchaser having made valuable improvements of which plaintiff had no notice.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 108, 110.]

**11. Mortgages (§ 369 (6)\*)—Trust Deeds—Sales—Action to Set Aside—Proper Parties.**—Where under a trust deed the trustee sold more parcels of land than was necessary and applied the proceeds to trust deeds not yet in default, the fact that the debt for which the sale was made was paid out of the money received from the parcels illegally sold, when there was sufficient money from the land first sold, did not make such creditor a proper or a necessary party to set aside the unnecessary sales.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 109.]

**12. Appeal and Error (§ 1170 (12)\*)—Reversal—Substantial Justice.**—Where a trustee in a trust deed sold more land than necessary to cover the debt and applied the money on deeds not in default, of which he was trustee, a decree, requiring the trustee to pay the purchaser the price paid, will not be reversed, where the trustee is amply solvent, although it would have been more regular to have substituted the purchaser to the lien of the deeds not in default, credits to which were canceled, as the trustee can indemnify himself from the proceeds of sales under such deeds of trust, because, where substantial justice has been reached, the court will not be astute to find technical objections by which a decree may be reversed.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig., 486.]

Appeal from Circuit Court, Southampton County.

Suit by Benjamin P. Woodward and another against J. W. Smith and E. Frank Story to set aside a sale of real estate under a trust deed. Decree for plaintiffs, and defendants separately appeal. Affirmed.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

*Buford & Peterson*, of Lawrenceville, *R. R. Hicks*, of Norfolk, and *E. Frank Story*, of Franklin, for appellants.  
*J. N. Sebrell, Jr.*, of Norfolk, for appellees.

BURTON *v.* COMMONWEALTH.

Jan. 24, 1918.

[94 S. E. 923.]

**1. Intoxicating Liquors (§ 210\*)—Transporting Liquor—Elements of Offense.**—Under Prohibition Act (Acts 1916, c. 146), § 39, the phrases "for use in this state" and "for sale" are not essential ingredients of the offense of bringing liquor into the state nor for transporting from one point to another in the state, and need not be alleged in an indictment.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 15, 24.]

**2. Statutes (§ 118 (1)\*)—Title and Subject of Acts.**—Prohibition Act, § 39, is not unconstitutional under Const. 1902, § 52 (Code 1904, p. ccxxi), in that the body of the act makes it a crime merely to "transport" liquor, and the title of the act relates to "transportation for sale," because such regulation is germane to and in furtherance of the "enforcement" of the statute.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 752.]

**3. Criminal Law (§ 566\*)—Reasonable Doubt—Doubt as to Which of Two.**—Where two persons had the same opportunity to commit an offense, and there is reasonable doubt as to which committed it, neither can be convicted.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 90.]

**4. Criminal Law (§ 789 (3)\*)—Requested Instructions—Form.**—Where there was evidence that another who was out of the state and was not indicted was the party that transported liquor, and not the accused, it was error to refuse to instruct that, if there was reasonable doubt as to which committed the act, "neither could be convicted"; the latter clause not rendering the instruction bad from the fact that the other was not indicted and was beyond the jurisdiction of the court.

[Ed. Note.—For other cases, 7 Va.-W. Va. Enc. Dig. 718, 723.]

Error to Circuit Court, Northampton County.

Arthur Burton was convicted of a violation of the prohibition law, and he brings error. Reversed.

*Stanley Scott* and *Louis S. Sacks*, both of Eastville, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.